85-1275

Supreme Court, U.S.
FILED
JAN 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

Case No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1985

ROBERT L. YORK

Appellant

v.

DISCIPLINARY COUNSEL

Appellee

On Appeal From The
Supreme Court of Ohio

JURISDICTIONAL STATEMENT

Robert L. York, pro se
1560 State Route 534
Newton Falls, Ohio 44444
(216) 872-0701

Angelo J. Gagliardo,
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175 South Third Street
Columbus, Ohio 43215
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55pp

QUESTIONS PRESENTED

1. Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio which fails:
   (a) to set forth that an accusation of professional misconduct is untrue until proven to be true, or,
   (b) to place the burden of proving the truth of the accusation upon the Relator, or,
   (c) to set forth the standard of proof which must be shown by the evidence prior to a finding by the hearing panel that the accusation is true,

fails to provide due process guaranteed to the accused lawyer by the Fourteenth Amendment to the Constitution of the United States.

2. Bank records of a lawyer which are obtained by the Disciplinary Counsel through alteration of a Subpoena not authorized by Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio are not admissible into evidence in a disciplinary proceeding of the lawyer.

3. A proceeding for the discipline of a lawyer which is not initiated and conducted in accordance with Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio deprives the accused lawyer of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States.

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OPINION BELOW

The official report of the Opinion of the Supreme Court of Ohio is set forth at 19 OS3d 150 (1985).

JURISDICTION

This matter is before the Court upon appeal of the Judgment of the Supreme Court of Ohio rendered on October 9, 1985, ordering that Appellant be indefinitely suspended from the practice of law. A Notice of Appeal of said Judgment to this Court was filed in the Supreme Court of Ohio on January 6, 1986.

The jurisdiction of this Court is invoked under the provisions of 28 USC §1257(2) which provides jurisdiction in this Court for appeal of a judgment of the highest state court where the validity of a state statute has been drawn in question as repugnant to federal law and the state court finds the state statute is valid.

STATUTES INVOLVED

Constitutional Provisions

Amend. 14, Sec. 1, U. S. Constitution:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statutes

Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio is set forth at 5 OS3d xxxix and included in the Appendix hereto.

STATEMENT OF THE CASE

This matter originated in September of 1982 by the filing of a complaint by Ingrid Kalany with the Grievance Committee of the Trumbull County, Ohio, Bar Association alleging that Appellant had misappropriated funds withheld from her for the payment of future real estate taxes as part of the closing of the sale of real estate which occurred in September of 1981.

The following events, all of which are contrary to the provisions of Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio, occurred.

Having received the Kalany complaint from the Trumbull County Bar Association for investigation and report back to said bar association, the Disicplinary Counsel of the Supreme Court of Ohio failed to report back to said bar association, and, instead retained the complaint in the Office of the Disciplinary Counsel and took action thereon without the knowledge or approval of said bar association.

On March 28, 1983, more than sixty days after the complaint was filed, the Disciplinary Counsel obtained a Subpoena Duces Tecum for the deposition of a bank officer and the production of part of Appellant's bank records "as soon as possible" and failed to give notice of the taking of said deposition to Appellant.

An employee of the Office of the Disciplinary Counsel altered said Subpoena Duces Tecum to include Appellant's bank records during a period of time which had no relevance to the Kalany complaint being investigated by the Disciplinary Counsel and obtained said records.

The Disciplinary Counsel, rather than the Trumbull County Bar Association, filed a formal Complaint against Appellant involving the Kalany transaction and, based upon matters disclosed by Appellant's bank records which were obtained under the altered Subpoena, also filed a formal Complaint against Appellant involving an Izzo transaction, after having been assured by the members of the Izzo family that they were satisfied with Appellant's conduct and would not participate in the filing of a complaint against Appellant.

Appellant was denied the right to discovery through the taking of the deposition of the employee in the Office of the Disciplinary Counsel who had signed the formal Complaint against Appellant.

On Sunday, December 18, 1983, the Disciplinary Counsel advised Appellant by telephone that the hearing upon the formal Complaint which had been set for hearing in Warren, Ohio, on Tuesday, December 20, 1983, would be held upon the same date at the Office of the Disciplinary Counsel in Columbus, Ohio, some 175 miles from Warren.

On December 20, 1983, a formal hearing was held in Columbus, Ohio, during which Appellant was without counsel and witnesses on his behalf, and was not permitted to introduce any evidence in defense of the Complaint, including evidence of federal constitutional claims.

On February 21, 1984, in order to avoid the hearing scheduled upon Appellant's Motion For A Temporary Restraining Order then pending in the District Court for the Southern District of Ohio, Eastern Division, Attorneys for the Disciplinary Counsel and members of the Supreme Court of Ohio represented to Judge John D. Holschuh that the Court would provide Appellant with a second hearing upon the formal Complaint during which Appellant would be permitted to introduce evidence of federal constitutional claims for later determination by the Supreme Court of Ohio, and on that basis Judge Holschuh withheld injunctive relief under the doctrine of abstention.

On March 16, 1984, all three members of the hearing panel which had conducted the formal hearing upon the Complaint held on December 20, 1983, resigned from the panel, without submitting findings of

fact and recommendations, or its certified report of proceedings before it, to the Board of Commissioners on Grievances and Discipline.

On August 15, 1984, a second formal hearing was held before a three-member panel, no one of which was a member of the panel at the first formal hearing.

The second hearing panel made findings of fact and recommendations regarding the formal Complaint against Appellant which were substantially that Appellant had committed no misconduct in the handling of the Kalany transaction, but had engaged in the practice of law during a former one-year suspension and had submitted an Affidavit to the Disciplinary Counsel which contained statements which were not true, and that Appellant had committed misconduct in the handling of funds in the Izzo transaction. The findings of fact by the hearing panel

were adopted by the Board of Commissioners which recommended that Appellant be indefinitely suspended from the practice of law.

The questions sought to be reviewed herein were raised at each stage of the disciplinary proceeding through Motions prior to the formal hearing upon the Complaint, evidence and argument presented during the formal hearing, Appellant's Brief before the Board of Commissioners, and Appellant's Objections To The Findings Of The Board Of Commissioners before the Supreme Court of Ohio.

However, contrary to the representation made to Judge Holschuh on February 21, 1984, in its opinion rendered in the disciplinary proceeding on October 9, 1985, the Supreme Court of Ohio discussed neither the federal constitutional claims which Appellant had raised before the Court nor the manner in which such questions were passed upon by the Court.

A Request For Certification Of Constitutional Questions was filed in the Supreme Court of Ohio on January 6, 1986, and is included in the Appendix hereto.

THE QUESTIONS ARE SUBSTANTIAL

The questions presented herein are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution, for the following reasons:

1. Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar of Ohio as it presently exists, and more specifically as purportedly applied in the case of the initiation, investigation and conduct of the disciplinary proceeding against Appellant, fails to provide the due process of law that this Court held must be provided by a state in its regulation of the practice of law. For example:

A state cannot exclude a person from the practice of law in a manner or for reasons that contravene the due process or equal protection clauses of the Fourteenth Amendment. Schware v. Board of Bar Examiners, 353 US 232, 77 SCt 752, 1 L Ed2d 796 (1957).

A proceeding to suspend a license to practice law must comport with the requirements of due process of law. Spevack v. Klein, 385 US 511, 87 SCt 625, 17 L Ed2d 574 (1967); In re Ruffalo, 390 US 544, 88 SCt 1222, 20 L Ed2d 117 (1968).

A state's power to control the practice of law cannot be exercised to abrogate federally protected rights. Johnson v. Avery, 393 US 483, 89 SCt 747, 21 L Ed2d 718 (1969).

A state court may neither act arbitrarily with respect to those licensed by it nor otherwise violate their constitutional rights. Erdmann v. Stevens, 458 F2d 1205

(2nd Cir., 1972) cert den 409 US 889, 93 SCt 126, 34 L Ed2d 147 (1972).

2. This Court has previously held the following regarding the admissibility of evidence obtained through unlawful means:

> Where law enforcement officers act illegally, evidence which would not inevitably have been discovered, which is obtained by exploitation of that illegality, rather than by means sufficiently distinguished to be purged of the primary taint, is "fruit of the poisonous tree", and inadmissible in a criminal proceeding. Wong Sun v. United States, 371 US 471, 83 SCt 407, 9 L Ed2d 441 (1963).

The constitutional rule requiring the exclusion of evidence obtained through an unreasonable search and seizure is applicable in state proceedings which are quasi-criminal in nature. One Plymouth Sedan v. Pennsylvania, 380 US 693, 85 SCt 1246, 14 L Ed2d 170 (1965).

This Court has also held that disbarment proceedings are adversary proceedings of a quasi-criminal nature. In re Ruffalo, 390 US 544, 88 SCt 1222, 20 L Ed2d 117 but has never specifically decided whether or not the exclusionary rule has application in lawy disciplinary proceedings.

The Supreme Court of Oregon has held that evidence obtained in violation of statute is not admissible in a lawyer's disciplinary proceeding, In re Langley, 230 Or 319, 370 P2d 228 (1962), and this Court denied certiorari in Elder v. Board of Medical Examiners, 385 US 1001, 87 SCt 701, 17 L Ed2d 541 (1967), to review the holding of the California state court that the rule excluding illegally seized evidence applies to an administrative hearing contemplating the deprivation of a professional license since that license constitutes a property right. 241 Cal App2d 246, 50 Cal Rptr 304 (1966).

As a result of this Court's holding in Ruffalo and One Plymouth Sedan, supra, and the denial of certiorari in Elder, there is a reasonable basis to conclude that upon being directly presented with the question of whether or not the exclusionary rule applies in lawyer disciplinary proceedings, this Court will hold that evidence obtained contrary to law may not be introduced in such quasi-criminal proceeding; however, until such question is directly addressed by the Court a substantial question exists regarding the position of the Court upon the application of the exclusionary rule in proceedings which are not totally criminal in nature.

3. A further substantial question presently exists as a result of the failure of Rule V of the Rules of the Supreme Court of Ohio for the Government of the Bar to set forth a standard of proof to be employed by the hearing panel and Board of Commissioners or to place the burden of proof upon the Relator as to whether or not said Rule can possibly provide the due process of law guaranteed by the Fourteenth Amendment to a lawyer accused of professional misconduct. This question is made more serious by the result of such failure in the case of Appellant, where the findings of fact by the Board of Commissioners were stated in terms of what the Board "felt" or "believed" or, in some instances, were based upon the failure of the Appellant to present evidence to disprove the allegation stated in the Complaint.

4. And lastly, a substantial question exists as to whether a lawyer accused of professional misconduct can ever be assured of due process in a disciplinary proceeding in view of the failure of the Supreme Court of Ohio to recognize and follow its own holdings in Smith v. Kates, 46 OS2d 263, 348 NE2d 320 (1976); and Disciplinary Counsel v. Hiller, 5 OS3d 237, 450 NE2d 1157 (1983); to the effect that any disciplinary procedure which is not in strict compliance with Rule V is without authority and must be disregarded.

PETITION FOR CERTIORARI

Appellant hereby requests that, in the event this Court finds that this appeal is improvidently taken, the Court treat this Jurisdictional Statement as a Petition For Certiorari, pursuant to 28 USC §2103.

Respectfully submitted,

Robert L. York, Appellant

PROOF OF SERVICE

I hereby certify that on the 6th day f January, 1986, I served a copy of the oregoing Jurisdictional Statement upon he Office of the Disciplinary Counsel, 75 South Third Street, Suite 280, olumbus, Ohio 43215, by personally anding said copy to Angelo J. Gagliardo, Disciplinary Counsel, or to an employee therein.

Robert L. York, Appellant

PROOF OF SERVICE

I hereby certify that on the 27th day of January, 1986, I served three copies of the foregoing Jurisdictional Statement in compliance with Rule 33 of the Supreme Court of the United States upon the Office of the Disciplinary Counsel, 175 South Third Street, Suite 280, Columbus, Ohio 43215, by overnight Federal Express.

Robert L. York

Robert L. York, Appellant

APPENDIX

SUPREME COURT, JANUARY TERM, 1985

Statement of the Case

OFFICE OF DISCIPLINARY COUNSEL v. YORK

Cite as Disciplinary Counsel v. York (1985), 19 Ohio St. 3d 150

Attorneys at law-Misconduct-Indefinite Suspension-Violation of previous one-year suspension-Unauthorized practice of law.

D.D. No. 85-13-Decided October 9, 1975

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Bar.

On May 11, 1983, the Office of Disciplinary Counsel, relator herein, filed a six-count complaint with the Board of Commissioners on Grievances and Discipline against Robert L. York, respondent. Each count of the complaint stems from Respondent's conduct in connection with a real estate closing held on September 16, 1981.

In Count I, relator alleged that respondent violated DR 1-102(A)(3)(4) and (6), 6-101, 7-101(A), 9-102(A)(B)(3) and (4) by misusing portions of funds entrusted to him, resulting from the sale of real property, for his own benefit and to the detriment of others.

The relator alleged in Count II that respondent, while suspended from the practice of law for one year, served as an escrow agent for both the sellers and buyers in a real estate closing, deposited funds in his "Escrow Account," failed to distribute these funds in accordance with the instructions on the closing statements, and converted portions to his own use, constituting violations of DR 1-102(A)(4) and (6), 9-102(A), (B)(3) and (4).

It was alleged in Count III that respondent, by acting as an escrow agent at said closing also engaged in the unauthorized practice of law in violation

of the Supreme Court order of June 24, 1981, in that respondent charged an escrow fee and a fee from the title company for performing title work in violation of DR 1-102(A)(5) and (6).

Relator alleged in Count IV that respondent maintained attorney-at-law escrow account No. 20338320 from January 1, 1981, through October 1981; that for a portion of this time, respondent was not entitled to engage in the practice of law; that on four occasions, checks were not honored by the bank due to insufficiency of funds; and that on one occasion the account was overdrawn. Relator alleged that respondent's conduct in handling client's monies constituted a violation of DR 1-102(A)(3), (4) and (6), 9-102(A), (B)(3) and (4).

Lack of recordkeeping in violation of DR 1-102(A)(6), 9-102(B)(2) and (3) was charged in Count V based on respondent's alleged inability to produce records of his handling of funds and property of a client.

In Count VI, relator alleged that respondent, in the course of the investigation pertaining to his conduct herein, forwarded to relator an affidavit which was false and in violation of DR 1-102(A)(4), (5) and (6) and the Attorneys' Oath of Office.

A hearing was held on August 15, 1984. Respondent was questioned by relator's counsel regarding the escrow account which was the subject of the various counts of the complaint.

Based on the evidence adduced at the earing, the board found that, with espect to Count I, respondent violated R 9-102(A), (B)(3) and (4). The board oncluded that $16,107.70 had been ntrusted to respondent and that respond- ent drew from the trust account at least $3,600 for his own personal use which resulted in the rejection of checks which had been written to two interested parties.

Finding that the relator failed to sustain its burden with respect to Count II, the count was dismissed by the board.

Pursuant to Count III, the board found that the evidence indicated that respondent's conduct at the real estate closing constituted an unauthorized practice of law in violation of the June 24, 1981, court order suspending respondent from the practice of law. The board noted respondent's use of his

attorney-at-law escrow account, the past attorney-client relationship which he had had with one of the parties and his failure to disclose that he was under suspension, and the minimal involvement of another attorney in the real estate transaction. Resultantly, the board concluded that respondent had violated DR 1-102(A)(5). The board, however, did not find a violation of DR 1-102(A)(6).

The board dismissed Count IV based on insufficiency of evidence in the record.

Citing two particular instances and respondent's inability to produce records of his handling of client's funds and his failure to properly identify the properties of his clients, the board concluded that respondent's lack of recordkeeping constituted a violation of DR 9-102(B)(2) and (3) but not DR 1-102(A)(6), and dismissed the latter charge as it related to Count V.

Finally, the board, finding that an affidavit attested to by respondent on May 3, 1983, in which he explained his conduct at the real estate closing contained falsehoods regarding the payment of taxes, determined that the relator had established a violation of DR 1-102(A)(4), (5) and (6) with regard to Count VI.

Pursuant to Gov. Bar R. V, the board adopted the findings of fact and conclusions of law of the panel and recommended that the respondent be indefinitely suspended from the practice of law.

Angelo J. Gagliardo, disciplinary counsel, and Mark H. Aultman, for relator.

W. Leo Keating and Daniel G. Keating, for respondent.

Per Curiam. Having reviewed the record and the findings of fact and conclusions of law of the board, this court determines that there are ample fact to justify the board's findings that respond-

ent violated DR 9-102(A), (B)(2), (3) and (4), and 1-102 (A) (4), (5) and (6).

In addition, it is undisputed that respondent was previously suspended from the practice of law on June 24, 1981 for a period of one year. (Bar Assn. v. York 1981, 66 Ohio St. 2d 485, 20 O.O.3d 404). Gov. Bar R. V(7) provides in pertinent part: "... A person who has been suspended for a period of one year from the practice of law, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct."

Accordingly, it is the judgment of this court that respondent be indefinitely suspended from the practice of law, and it is so ordered. Judgment accordingly.

Celebrezze, C.J., Sweeney, Locher, Holmes, C. Brown, Douglas and Wright, JJ. concur.

THE SUPREME COURT OF OHIO

COLUMBUS

Disciplinary Counsel,

Relator

v.

Robert L. York,

Respondent.

1985 TERM

To Wit: October 9, 1985

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE BAR

DD85-13

O R D E R

It appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on April 16, 1985, recommending that the respondent, Robert L. York, be indefinitely suspended from the practice of law pursuant to Rule V, Section 6(b) of the Supreme Court Rules for the Government of

the Bar of Ohio, and it further appearing that respondent filed objections to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was heard by the court. On consideration thereof, it is ordered and adjudged by this court that respondent, Robert L. York, be indefinitely suspended from the practice of law pursuant to Rule V, Section 6 (b) of the Supreme Court Rules for the Government of the Bar of Ohio.

The respondent, Robert L. York, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he is forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services, and he is hereby divested of each, any and all of

ne rights, privileges and prerogatives ustomarily accorded to a member in ood standing of the legal profession f Ohio.

It is further ordered that the espondent, Robert L. York, surrender is certificate of admission to practice o the Clerk of this Court forthwith and hat his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the the respondent, Robert L. York, pay the costs of these proceedings taxed in the amount of Two Thousand Six Hundred Seventy-Seven Dollars ($2,677.00) on or before November 12, 1985.

****

It is further ordered that the Clerk of this Court issue certified copies of this order as provided for in Section 20 of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

APPROVED:

S/ FRANK D. CELEBREZZE
FRANK D. CELEBREZZE, Chief Justice

I, James Wm Kelly, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from journal of this Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 9th day of October, 1985.

JAMES WM. KELLY CLERK

S/ JOSEPH N. ROSENTHAL DEPUTY

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL
Relator

v.

ROBERT L. YORK
Respondent

No. DD 85-13

NOTICE OF APPEAL

Pursuant to 28 USC §1257(2), Respondent hereby appeals to the Supreme Court of the United States from the Judgment rendered herein on October 9, 1985, ordering the indefinite suspension of Respondent from the practice of law.

S/ ROBERT L. YORK
Robert L. York, Respondent

FILED CO.
JAN-6 1986
SUPREME COURT OF OHIO
James Wm. Kelly, Clerk

PROOF OF SERVICE

I hereby certify that on the 6th day of January, 1986, I served a copy of the foregoing Notice of Appeal upon the Office of the Disciplinary Counsel, 175 South Third Street, Suite 280, Columbus, Ohio 43215, by personally handing said copy to Angelo J. Gagliardo, Disciplinary Counsel, or to an employee therein.

S/ ROBERT L. YORK
Robert L. York, Respondent

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL
Relator

v.

ROBERT L. YORK
Respondent

No. DD 85-13

REQUEST FOR CERTIFICATION OF CONSTITUTIONAL QUESTIONS

Respondent hereby requests that this Court certify to the Supreme Court of the United States the federal constitutional questions raised by the Respondent herein and the manner in which they were passed upon by this Court.

S/ ROBERT L. YORK
Robert L. York, Respondent

FILED CO.
JAN-6 1986
SUPREME COURT OF OHIO
James Wm. Kelly, Clerk

PROOF OF SERVICE

I hereby certify that on the 6th day of January, 1986, I served a copy of the foregoing Request For Certification of Constitutional Questions upon the Office of Disciplinary Counsel, 175 South Third Street, Suite 280, Columbus, Ohio 43215, by personally handing said copy to Angelo J. Gagliardo, Disciplinary Counsel, or to an employee therein.

S/ ROBERT L. YORK
Robert L. York, Respondent

AMENDMENTS TO THE SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO

The Supreme Court Rules for the Government of the Bar of Ohio were amended, and re-adopted as amended, effective July 1, 1983, as follows:

****

RULE V

DISCIPLINARY PROCEDURE

Pursuant to the powers of this Court over the Bar of this State and the members thereof, this rule is amended, as follows, effective July 1, 1983, and shall apply to all pending cases.

****

(3) REFERRAL FOR INVESTIGATION.

... In the event that a Grievance Committee of a local bar association determines in the course of a disciplinary investigation that the matters of alleged misconduct under investigation are sufficiently serious and complex as to require the assistance of the Disciplinary Counsel, the Chairman of the Grievance Committee of the local bar association may direct a written request for assistance to the Disciplinary Counsel. The Disciplinary Counsel shall investigate all such matters referred to him and report the results of the investigation to the committee which requested it.

****

(4) APPLICATION OF RULE; AUTHORITY AND DUTY OF BAR COMMITTEES AND DISCIPLINARY COUNSEL. From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law; all proceedings for the discipline of such attorneys and counselors at law, and persons under suspension or disbarred from the practice of law; and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule. Disciplinary Counsel and any committee authorized by any regularly organized local bar association shall investigate any matter referred to them or which comes to their attention, and may cause a complaint to be filed pursuant to this rule in cases where they find reasonable

cause to believe that misconduct has occurred or that a condition of mental illness exists.

****

The investigation of complaints shall be concluded within sixty days from the date of the receipt of the complaint. A decision as to the disposition of such complaint shall be made within thirty days thereafter. Extensions of time for completion of the investigation may be granted upon written request, and for good cause shown, by the Secretary or Acting Secretary, of the Board of Commissioners on Grievances and Discipline of the Bar. If the investigation is not completed within sixty days from the date of filing of the complaint and no written request has been made for an extension of time, the matter under investigation shall be referred to the Disciplinary Counsel. No extension of time shall be granted beyond

one-hundred-fifty days from the date of receipt of the complaint. If an investigation by the Grievance Committee of a local bar association is not completed within one-hundred-fifty days from the date of filing the complaint, the matter under investigation shall be referred to the Disciplinary Counsel.

****

(5) DEFINITIONS. (a) MISCONDUCT. Misconduct shall mean any violation by an attorney of any provision of the oath of office taken upon admission to the practice of law in this State or any violation of the Code of Professional Responsibility as adopted by the Court from time to time, disobedience of these rules or of the terms of an order imposing a suspension from the practice of law, or the commission or conviction of a crime involving moral turpitude.

****

(9) THE COMPLAINT; WHERE FILED; BY WHOM SIGNED. A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board.

(10) DUTY OF THE BOARD UPON FILING OF THE COMPLAINT. (a) NOTICE TO RESPONDENT. The Secretary of the Board of Commissioners shall send a copy of the complaint by certified mail to the Respondent with a notice requiring him to file, within twenty (20) days after the mailing of such notice, six (6) copies of his answer and to serve copies thereof upon counsel of record named in the complaint. Extensions of time for the filing of the answer may be granted, for good cause shown, by the Secretary of the Board of Commissioners.

****

(11) HEARING BY PANEL OF THREE COMMISSIONERS. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Secretary of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes. Requests for continuances may be granted by the Chairman of the panel for good cause shown.

****

(12) AUTHORITY OF PANEL; DISMISSAL. If the panel finds that the complaint or evidence is insufficient to support a charge of misconduct the panel may order that the complaint be dismissed. Such action shall be reported to the Secretary of the Board of Commissioners who shall give written notice of the action taken to the Board of Commissioners, the Respondent, all counsel of record, Disciplinary Counsel, and the local bar association or associations of the county in which the Respondent resides and maintains his office and the county from which the complaint arose.

(13) REFERRAL BY PANEL. In the alternative, if the panel determines that findings of fact and recommendations for dismissal should be referred to the Board of Commissioners for review and action by the full Board, the panel may submit its findings of fact to the Board of Commis-

sioners and may recommend dismissal in the same manner as provided in the following sections of this Rule V with respect to public reprimand, suspension or disbarment.

(14) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF PANEL. If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for a period of one year, suspension for an indefinite period, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

(15) REVIEW BY ENTIRE BOARD OF COMMISSIONERS. Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the complaint is dismissed, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice of the complaint had been dismissed by the panel that heard the matter.

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(33) POWER TO ISSUE SUBPOENAS. In investigations and proceedings under this rule, upon application by Disciplinary Counsel, or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the state authorized to sign a complaint under Section (9) hereof, or by the Respondent or Relator, each member of the Board of Commissioners and its Secretary shall have power to issue subpoenas and to cause testimony to be taken under oath before Disciplinary Counsel or before the Grievance Committee of any regularly organized local bar association in the State, or before a hearing panel of the Board of Commissioners. All such subpoenas shall be signed by a member of the Board of Commissioners or its Secretary and served as provided by statute.

(34) MAY ORDER DEPOSITIONS. The Secretary of the Board of Commissioners may order testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil actions, and such depositions may be used to the same extent as permitted in civil actions.

****

(36) RULES OF EVIDENCE. All rules of evidence shall be observed in the conduct of all hearings, and the Respondent may be represented by counsel, who shall enter formal appearance.

****

(38) BOARD MAY PRESCRIBE RULES. The Board of Commissioners may, subject to the prior approval of this Court, adopt other rules and regulations not inconsistent herewith.

(39) RULE TO BE LIBERALLY CONSTRUED. The process and procedure under this rule and other regulations approved by this Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objections, report or order to show cause may be made at any time prior to final order of the Court. The party affected by such amendment shall be given reasonable time to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularits or for any error not resulting in a miscarriage of justice. This rule and such regulations relating to investigation and proceedings involving complaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the courts and the legal profession....

****

Supreme Court, U.S.
FILED
FEB 19 1986
JOSEPH F. SPANIOL, JR.
CLERK

Case No. 85-1275

IN THE

Supreme Court of the United States

OCTOBER TERM 1985

ROBERT L. YORK

Appellant,

vs

OFFICE OF DISCIPLINARY COUNSEL
OF THE SUPREME COURT OF OHIO,

Appellee,

On Appeal from the Supreme Court of Ohio

BRIEF IN OPPOSITION TO APPELLATE JURISDICTION, OR IN ALTERNATIVE, TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED*

1. Does the Fourteenth Amendment to the U.S. Constitution require that all standards for discipline of attorneys be set forth in rules promulgated the state court having disciplinary jurisdiction, or may such standards also be set forth in other sources of law such as case law?

2. Does the exclusionary rule, which the U.S Constitution requires be applied in criminal cases to exclude certain evidence, apply in attorney disciplinary proceedings which are *sui generis* and not criminal?

3. Does the Fourteenth Amendment to the U.S. Constitution require strict compliance with court rules that are directory or are promulgated for purposes other than the granting of substantive rights to attorneys, where those rules give specific notice that they are to be liberally construed for the protection of the public, the courts, and the legal profession?

*There are no parties to this proceeding other than those listed in the caption.

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Case No. 85-1275

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ROBERT L. YORK

Appellant,

VS

OFFICE OF DISCIPLINARY COUNSEL
OF THE SUPREME COURT OF OHIO,

Appellee,

JURISDICTION OF THIS COURT

This Court does not have appellate jurisdiction under 28 U.S.C. 1257 (2) and should reject the petition for certiorari.

In *Dist. Col. Court of Appeals v. Feldman,* 460 US 462, 75 L. Ed 2d 206, 103 S. Ct. 1303 (1985), this court, in footnote 16, quoted the Court of Appeals for the Ninth Circuit in *Mackay v. Nesbitt,* 412 F 2d 846 (CA9 1969), as follows:

> Orders of a state court relating to the admission, discipline, and disbarment of members of its bar may be reviewed only by the Supreme Court of the United States on certiorari to the state court, and not by means of an original action in a lower federal court. The rule serves substantial policy interests arising from the historic relationship between state judicial systems and the members of their respective bars, and between the state and federal judicial systems.

The rules sought to be reviewed are not "statutes" within

the meaning of 28 U.S.C. 1257 (2). The Rules for the Government of the Bar of Ohio are rules adopted by the Ohio Supreme court as part of its inherent and constitutional authority to discipline attorneys (Ohio Constitution; Article IV, Sec. 2), and promulgated through its official reports.

This case is distinguished from *Lathrop v. Donohue*, 367 U.S. 820 (1961), in that Ohio has no integrated bar, and any rules promulgated for the regulation of the bar are adopted by the judiciary alone pursuant to its constitutional authority under Ohio Constitution, Article IV, Sec. 2.

This Court should not exercise its certiorari jurisdiction because there is no substantial federal question which outweighs the substantial interest of the State of Ohio in regulating the attorneys who are admitted to the practice of law in its courts.

STATEMENT OF THE CASE

A disciplinary action was filed against Appellant on May 11, 1983. On December 19, 1983, Appellant filed an action in federal court asking, *inter alia,* for an order to prevent the disciplinary action from proceeding, which order was not granted. After a hearing on December 20, 1983, before the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court, Appellant objected, in the federal suit already filed, *inter alia,* that he had been denied the opportunity to present evidence concerning objections to the state proceeding which were based upon rights granted by the federal constitution. A subsequent hearing was held in the state disciplinary proceeding, at which Appellant was permitted to present arguments based upon the federal constitution, and to present such evidence as he chose. Based upon the evidence presented at that hearing, and the fact that Appellant had previously been suspended from the practice of law for one (1) year, the Board of Commissioners of the Ohio Supreme Court recommended that Appellant be suspended for an indefinite period from the practice of law in Ohio. Appellant filed objections to the Board's report and recommendation, pursuant to Ohio Gov. Bar Rule V (18), again raising constitutional objections to the proceedings. On October 9, 1985, after oral argument on Respondent's objections, the Ohio Supreme Court accepted the Board's recommendation, and ordered that Appellant be indefinitely suspended from the practice of law for violations of DR 9-102 (A) (B) (2) (3) and (4) and DR 1-102 (A) (4) (5) and (6) of Ohio's Code of Professional Responsibility. Appellant has, throughout the proceeding, argued that the federal constitution requires the State of Ohio to follow certain procedures, or prevents the State of Ohio from following other procedures, for a wide variety of different reasons, which arguments the Supreme Court of Ohio has rejected, without comment, in its decision in the matter.

ARGUMENT

Appellant's "questions presented" raise no substantial questions which this court, given the substantial state interest of the State of Ohio in regulating its legal profession for the protection of the public, ought to consider:

1. Appellant's First "Question Presented"

Appellant states that because it is not specifically set forth in Ohio's Rules for the Government of the Bar that an accusation of professional misconduct is untrue until proven to be true, or because it is not specifically set forth in those rules that the burden of proof is on Relator, or because it is not specifically set forth what standard of proof applies; then Ohio's rules violate the Fourteenth Amendment to the U.S. Constitution.

Appellant assumes that the rules promulgated by the Ohio Supreme Court can be the only source of law governing disciplinary matters. Thus Respondent rejects both common sense and case law. Respondent would, apparently, have this court rule that a law which states that "criminal charges must be proven beyond a reasonable doubt" is invalid because it does not state it is the prosecutor, and not the defense, that has to prove the charges. Some matters, however, are so elementary that it is not necessary to state them.

Similarly, there is no requirement, of the federal constitution or otherwise, that the standards governing attorney discipline be set forth solely in rules promulgated by a state Supreme Court. Persons admitted to the practice of law are given notice of the rules and standards which govern them in both case law and officially promulgated rules. The standard of proof governing disciplinary proceedings in Ohio (preponderance of the evidence) is, for example, set forth in Ohio case law. *In Re Lieberman,* 163 O St. 35 (1955). At-

torneys, of all people who are subjected to legal process, may be presumed to be familiar with the significance of case law, and the fact that something is not specifically set forth in court rules is hardly an indication that it is not valid law.

2. Appellant's Second "Question Presented"

Appellant states that "bank records of a lawyer ... obtained ... through alteration of a subpoena" should not be admissible evidence in a disciplinary proceeding. Appellant refers to the handwriting, on a typewritten subpoena, by an investigator of the Office of Disciplinary Counsel, in the presence of the bank officer to whom the subpoena was directed, of a different date than appeared on the original subpoena, such that, after the alteration, the investigator was able to obtain more bank records, covering a longer period of time than authorized by the original. There is no allegation that the alteration was made to mislead the bank officer nor that the investigator had any less right to obtain the bank records covering the longer period of time than the shorter. The objection is merely that the investigator did not follow the correct form and that upon learning that he had not asked for sufficient bank records when originally requesting the subpoena, he should have gone back to request another subpoena rather than alter the subpoena himself. Appellant argues that because of this technical defect, involving non-criminal but insufficiently bureaucratic behavior, all evidence concerning the trust account records obtained as a result of the subpoena should be excluded from evidence.

This Court should reject such an argument. In the state of Ohio all disciplinary proceedings are conducted under the authority of the Ohio Supreme Court, which has original jurisdiction in all such proceedings (Ohio Constitution IV [2] [B] [1] [g]). There is no significant threat of unlawful conduct by the Ohio Supreme Court or its agents and del-

egates which is sufficient to justify an exclusionary rule with respect to credible, relevant, and probative evidence which is not secured by criminal means.

The only attorney discipline case cited by Appellant for the exclusionary rule does not stand for the propostion that evidence obtained by an employee of a state supreme court as a result of conduct that does not follow prescribed form, but is not criminal, should be excluded. *In Re Langley*, 230 Or 319, 270 P2 2d 208 (1962), held that tapes acquired as a result of criminal eavesdropping, a felony under Oregon Law, should be excluded. It is reasonable to exclude in courts of law evidence obtained as a result of criminal conduct for reasons of public policy involved in enforcing the criminal code. This principle, however, should not be extended to all conduct that can be called "unlawful." Where the conduct is "unlawful" only in the sense that it is unauthorized, and fails to follow correct form, there is no substantial public policy to be protected by requiring credible and probative evidence be excluded in a proceeding in which the primary purpose is to protect the public from professional misconduct. While disciplinary hearings which are *sui generis* may be characterized as "quasi-criminal," they are also "quasi-civil," and all of the rules which are applicable to the criminal process do not, and should not, apply.

Ohio's disciplinary proceedings are neither civil nor criminal, but are *sui generis*. *Ohio State Bar Association v. Weaver*, 41 Ohio St. 2d 97 (1975). The Ohio Rules of Evidence apply in Ohio disciplinary proceedings (Gov. Bar Rule V [36]). Ohio Rule of Evidence 402 provides that:

> All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio. Evidence which is not relevant is not admissible.

There is no doubt that the evidence of which Respondent complains (bank records of his trust account) was relevant to the changes against him, inasmuch as he was charged, *inter alia,* with violating DR 9-102, concerning attorney trust accounts. There is similarly no doubt that the bank records were reliable and probative. Under such circumstances, an exclusionary rule should not apply in attorney disciplinary proceedings. See *Matter of Burton,* 472 A 2d 831 at 846 (D.C. App., 1984).

3. Appellant's Third "Question Presented"

Appellant states that a proceeding for lawyer discipline which is not initiated and conducted in accordance with Rule V of the Rules for the Government of the Bar of Ohio deprives the lawyer of due process. The statement is true so far as it goes, but Appellant attempts to draw extraordinary conclusions from it. He argues, for example, that a rule which provides for the appointment of a hearing panel, because it does not explicitly provide for the appointment of another hearing panel, must prohibit the appointment of another hearing panel.

Appellant though he cites Gov. Bar Rule V (39) in his Appendix, apparently overlooks the significance of the rule, which states, in part:

> No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularly or for any error not resulting in a miscarriage of justice. This rule and such regulations relating to investigation and proceedings involving complaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the courts and the legal profession...

The federal constitution does not require that all rules promulgated by state courts for the government of the bar become substantive rights enforceable by individual attor-

neys. The Ohio Supreme Court has specifically held, in *Ohio State Bar Assn. v. Sacher,* 8 Ohio St. 3d 49 (1985), that Gov. Bar Rule V (4) (concerning the time periods in which investigations must be completed) "does not grant substantive rights to attorneys." 8 Ohio St. 3d 51. The rules concerning the times in which investigations are to be completed are, in other words, directory, designed to encourage prompt response to complaints for the protection of the public. The Rules for the Government of the Bar provides a general framework in which the disciplinary process operates. The fact that there is no specific rule providing for the appointment of a second hearing Panel where a Respondent objects to action taken by a first, for example, does not preclude such appointment pursuant to Gov. Bar Rule V (11). Respondent's suggestion, that there must be "strict compliance" with Gov. Bar Rule V, not only with respect to those rules designed to protect basic rights of due process, but also with respect to rules that are merely directory or establish a general framework, ought to be rejected by this Court.

Appellant Has Not Been Denied Due Process of Law

Appellant was not denied due process of law as provided in the federal constitution. Appellant has been given an opportunity to raise constitutional objections to the disciplinary proceedings to which he was subject. He has done so vigorously, and all of his objections have been specifically stated in the record. The Ohio Supreme Court, by imposing discipline, has rejected Appellant's constitutional arguments, and has thereby ruled that the proceedings in this case comport with its understanding of the due process protections provided by the U.S. Constitution.

Appellant has received notice of the charges against him (by the filing of a formal complaint on May 11, 1983) prior to any hearing, and thus the issue involved in *In Re Ruffalo,* 390 U.S. 544, 88 St. Ct. 1222 20 L Ed 2d 117 (1968), is

not present. Moreover, despite the fact that Respondent had not, as of the date of his first hearing on December 20, 1983, filed an answer to the complaint, Respondent was given a second hearing (on August 15, 1984), at which he presented evidence and testified. Thus Appellant has been afforded not only an opportunity for an evidentiary hearing (the due process requirement), but an actual evidentiary hearing. And Appellant has been given an opportunity to raise constitutional objections, on the record, at the first hearing on December 20, 1983, and the second hearing on August 15, 1984, and in his objections filed with the Ohio Supreme Court on October 11, 1984. Thus Appellant has had an opportunity to raise constitutional objections for timely consideration by the only court of competent jurisdiction in the Ohio disciplinary process (the Ohio Supreme Court by virtue of Ohio Constitution Article, Section 2 [g]), and the requirements of *Middlesex County Ethics Committee v. Garden State Bar Association,* 457 U.S. 423 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982), have been met.

In *Stein v. Gagliardo,* Case No. C83-2415 (N.D. Ohio, June 24, 1983), an attorney sought to obtain an injunction to prevent Disciplinary Counsel of the Supreme Court of the State of Ohio from enforcing disciplinary rules concerning advertising. The Court, granting a motion to dismiss, and applying the abstention doctrine enunciated in *Younger v. Harris,* 401 US 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), as applied to attorney disciplinary proceedings in *Middlesex County, supra*, stated:

> Finally, there must an adequate opportunity in the state proceeding to raise constitutional questions. According to Gov. R. V, upon receipt of the Commissioner's report, the Supreme Court issues an order to the respondent attorney to show cause why the report should not be confirmed. The Respondent then has twenty (20) days to object to the Commissioner's recommendations. When timely objections are filed the Supreme Court conducts a hearing wherein the Respondent is given an opportunity to raise

> constitutional challenges ... The Court finds that all the criteria set forth in *Middlesex County* are satisfied requiring this court to abstain from determining the issues in this case.

Due process requires that state courts permit Respondents who have federal constitutional claims to make a record of those claims, in order to bring those claims for consideration before the state court at the earliest time that the state court is required to make a decision in the proceeding. It does not require dissertations on the details of constitutional law, and indeed, with respect to federal law, any speculation, beyond considering those rights which are clearly enunciated in the constitution or federal case law, would be presumptuous and unwise.

CONCLUSION

Ohio's system of disciplinary enforcement is an unusual one, involving disciplinary investigation and enforcement by both local bar associations and a centralized agency operating under the Supreme Court of Ohio. Its Rules for the Government of the bar are directed to defining a framework in which all the agencies to whom authority is delegated may operate, and Appellant's suggestion that there must be "strict compliance" with each of these rules, even those that are directory and not designed to protect basic rights, ought to be rejected. Even construed strictly, however, rather than as provided in Gov. Bar Rule V (39), there is no basis under Ohio's Rules for an exclusionary rule as to reliable and probative evidence. Finally, there is no requirement that court promulgated rules be the only basis for legal discipline. Courts have long been deemed to speak through opinions in case law, and attorneys, more than most people subject to legal processs, may be presumed to be able to find the law enunciated in such a manner.

No one is denying that Appellant is entitled to his rights of due process provided by the 14th Amendment to the U.S. Constitution. Rather than being deprived of these rights in the instant case, however, Appellant has, by being afforded a second hearing wherein he could raise whatever constitutional issues he wished, been granted more than the federal constitution requires.

Accordingly, this Court should dismiss the appeal, and for the same reasons as set forth herein, there being no substantial federal interest which outweighs the substantial interests of the State of Ohio in regulating the members of the state's legal profession for the protection of the public, should not grant certiorari.

Respectfully submitted,

/s/ _____
A.J. Gagliardo
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/s/ _____
Mark H. Aultman
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief In Opposition to Appellate Jurisdiction, or in Alternative, to Petition for Certiorari, was mailed by regular U.S. mail to Appellant, Robert L. York, 1560 State Route 534, Newton Falls, Ohio 44444, on this _____ day of _____ 1986.

/s/ _____
Mark H. Aultman
Staff Counsel

APPENDIX

OHIO CONSTITUTION ARTICLE IV SEC. 2

§ 2 The supreme court.

(A) The supreme court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the supreme court in the place and stead of the absent judge. A majority of the supreme court shall be necessary to constitute a quorum or to render a judgment.

(B)(1) the supreme court shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination;

(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The supreme court shall have appellate jurisdiction as follows:

(a) In appeals from the courts of appeals as a matter of right in the following:

(i) Cases originating in the courts of appeals;

(ii) Cases in which the death penalty has been affirmed;

(iii) Cases involving questions arising under the constitution of the United States or of this state.

(b) In appeals from the courts of appeals in cases of felony on leave first obtained.

(c) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;

(d) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(e) The supreme court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

(C) The decisions in all cases in the supreme court shall be reported, together with the reasons therefor. (Amended May 7, 1968.)

RULE V
DISCIPLINARY PROCEDURE

Pursuant to the powers of this Court over the Bar of this State and the members thereof, this rule is amended, as follows, effective on July 1, 1983, and shall apply to all pending cases.

(1) Creation of Board of Commissioners on Grievances and Discipline of the Bar. There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline of the Bar. Said Board of Commissioners shall consist of seventeen (17) members of the Bar of this Court, appointed by this Court. The members of such Board shall be appointed from each of the Ohio Appellate Districts as follows: District 1, two members; District 2, one member; District 3, one member; District 4, one member; District 5, one member; District 6, two members; District 7, one member; District 8, three members; District 9, one member; District 10, two members; District 11, one member; and District 12, one member. Inital appointments under this rule shall be made as follows: Members appointed from former districts one (1), four (4) six (6), seven (7), eleven (11), twelve (12), thirteen (13), and fifteen (15), with remaining terms shall continue to serve for the same term for the new districts one (1), six (6), two (2), ten (10), nine (9), eight (8), eleven (11), and seven (7), respectively. The member appointed from new district three (3) shall be selected, by majority vote of the Supreme Court, from among the members appointed from former districts three (3) and sixteen (16). The members appointed from new district four (4) shall be selected, by majority vote of the Supreme Court, from among the members appointed from former district eight (8) and seventeen (17). The member appointed from new district five (5) shall be selected, by the majority vote of the Supreme Court, from among the members appointed from former districts nine (9) and ten (10). The members selected from

districts three (3), four (4) and five (5) shall continue to serve their present term. The remaining members shall be appointed by this Court for the following terms: One (1) member from district one (1) for the term ending 12-31-83; one (1) member from district six (6) for the term ending 12-31-85; one (1) member from district eight (8) for the term ending 12-31-84; one member from district ten (10) for the term ending 12-31-85; one member from district twelve (12) for the term ending 12-31-85. Thereafter the term of office of each member of said Board of Commissioners shall be three (3) years, beginning on January 1 next following his appointment with each member eligible for reappointment to one succeeding term. Any member of the Board whose term has expired and who shall have an uncompleted assignment as a member of a panel shall continue to serve for the purpose of such assignment until it shall have been concluded before the Board of Commissioners, and further provided that his successor commissioner shall take no part in the proceedings of the Board concerning such assignment. Appointments to terms commencing January 1 of any year shall be made prior to December 1 of the preceding year. Vacancies for any cause shall be forthwith filled by an appointment by this Court for the unexpired term. The Court shall each year designate one member as Chairman of said Board of Commissioners and designate a Secretary, each of whom shall have authority to execute journal entries on behalf of the Board of Comissioners and of panels thereof. The Board of Commissioners shall meet in Columbus, Ohio, the first Friday after the second Monday during the months of February, April, June, August, October and December. The Chairman or the Secretary of the Board may call additional meetings of the Board when necessary.

(2) Jurisdiction of Board. The Board of Commissioners is empowered and charged to receive, entertain, inquire into, take evidence, preserve the record, make findings and submit recommendations to this Court as hereinafter provided:

(a) concerning complaints of misconduct as hereinafter defined which are alleged to have been committed by an attorney and counselor at law, person under suspension from the practice of law, or

(b) concerning the mental illness of any attorney and counselor at law, or

(c) relating to petitions for reinstatement as an attorney and counselor at law in this State, or

(d) upon reference by this Court of conduct by an attorney affecting any proceeding under this rule, where the acts allegedly constitute a contempt of this Court or a breach of these rules but did not take place in the presence of the court or a member thereof, whether by willful disobedience of any order or judgment of this Court or the Board of Commissioners, by interference with any officer of this Court in the prosecution of any duty, or otherwise; provided that nothing herein shall be construed as limiting or affecting the plenary power of this Court to impose punishment with reference either to contempts or breaches of these rules committed in its presence or the plenary power of any other court with reference to contempts committed in its presence.

(3) Referral for Investigation. The Board of Commissioners may refer to the Grievance Committee of the appropriate local bar association or to Disciplinary Counsel any matters coming to its attention for investigation, as hereinafter provided.

There is hereby created the position of Disciplinary Counsel. The Supreme Court shall appoint a Disciplinary Counsel and such assistants as necessary who shall be attorneys at law admitted to practice in this state and who shall not engage in the private practice of law while serving in that capacity.

In the event that a Grievance Committee of a local association determines in the course of a disciplinary investigation that the matters of alleged misconduct under investigation are sufficiently serious and complex as to require the assistance of the Disciplinary Counsel, the Chairman of the

Grievance Committee of the local bar association may direct a written request for assistance to the Disciplinary Counsel. The Disciplinary Counsel shall investigate all such matters referred to him and report the results of the investigation to the committee which requested it.

All complaints alleging violations of DR 2-101, and DR 2-102(A) and (B) shall be referred to or filed with Disciplinary Counsel. Disciplinary Counsel shall have exclusive authority to investigate such complaints, file formal complaints with the Board and prosecute formal complaints filed with the Board. All formal complaints filed with the Board alleging violation of DR 2-101 and DR 2-102(A) and (B) shall be filed by the Disciplinary Counsel in the name of Disciplinary Counsel as relator. Proceeding in such matters shall be conducted in the same manner as all other disciplinary proceedings provided for in this rule.

The Disciplinary Counsel shall appoint, with the approval of the Supreme Court, staff personnel as required to satisfactorily complete investigation of matters referred to him pursuant to these rules or filed with him pursuant to Rule II of the Supreme Court Rules for the Government of the Judiciary. The Supreme Court shall fix the compensation of the Disciplinary Counsel and personnel employed by the Disciplinary Counsel and provide office facilities, furnishings, stationery, equipment and office supplies for the Disciplinary Counsel.

Funds for the operation of the Disciplinary Counsel's office, including compensation of the Disciplinary Counsel and staff, shall be provided from the registration fees collected pursuant to Rule VI of the Supreme Court Rules for the Government of the Bar of Ohio.

The Disciplinary Counsel shall be under the supervision of and responsible to the Secretary of the Board of Commissioners on Grievances and Discipline of the Bar and the Board of Commissioners on Grievances and Discipline of the Judiciary created in Rule II of the Supreme Court Rules

for the Government of the Judiciary, and shall file annually with the Supreme Court and the Secretary a report of the activities and accomplishments of his office and a report of the expenses of operation of his office.

(4) Application of Rule; Authority and Duty of Bar Committees and Disciplinary Counsel. From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law; all proceedings for the discipline of such attorneys and counselors at law, and persons under suspension or disbarred from the practice of law; and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provision of this rule. Disciplinary Counsel and any committee authorized by any regularly organized local bar association shall investigate any matter referred to them or which comes to their attention, and may cause a complaint to be filed pursuant to this rule in cases where they find reasonable cause to believe that misconduct has occurred or that a condition of mental illness exists.

The investigation of complaints with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law shall be conducted by Disciplinary Counsel or the Grievance Committee of a local bar association. A local bar association may provide by its constitution, regulations or rules, for the appointment of lay persons as members of its grievance committee, provided that the majority of such committee shall consist of attorneys at law admitted to the practice of law by this Court.

The investigation of complaints shall be concluded within sixty days from the date of the receipt of the complaint. A decision as to the disposition of such complaint shall be made within thirty days thereafter. Extensions of time for completion of the investigation may be granted upon written

request, and for good cause shown, by the Secretary or Acting Secretary, of the Board of Commissioners on Grievances and Discipline of the Bar. If the investigation is not completed within sixty days from the date of filing the complaint and no written request has been made for an extension of time, the matter under investigation shall be referred to the Disciplinary Counsel. No extension of time shall be granted beyond one-hundred-fifty days from the date of receipt of the complaint. If an investigation by the Grievance Committee of a local bar association is not completed within one-hundred-fifty days from the date of filing the complaint, the matter under investigation shall be referred to the Disciplinary Counsel.

If a committee or Disciplinary Counsel determines upon investigation of a complaint that the filing of a formal complaint with the Board of Commissioners on Grievances and Discipline of the Bar is not warranted, the complainant shall be notified in writing of that determination.

The Grievance Committee of each local bar association shall file quarterly, by the fifteenth day of January, April, July, and October of each year, with the Disciplinary Counsel a report of the number of complaints made to the committee during the preceding quarter. The report shall specify the types of complaints filed, including commingling of funds, conviction of crime, failure to file income tax returns, failure to protect the interests of a client, soliciting, embezzlement, conversion, failure to account, excessive fees, mental illness and any other type of complaint not herein set forth. The report shall indicate the number of complaints filed, the number pending in each category and the number terminated by action of the committee during the reporting period.

The names of the Chairman of the Grievance Committee of the local bar association shall be reported in writing annually to the Disciplinary Counsel by the President of each local bar association.

The Board of Commissioners or any member thereof, Disciplinary Counsel, and the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State may call upon any attorney and counselor at law or judge in the State to assist in any investigation or to testify in any hearing before the Board of Commissioners or any panel for which provision is made in this rule, as to any matter as to which he would not be bound to claim privilege as an attorney at law. No such attorney and counselor at law or judge shall negelect or refuse so to assist in any such investigation or so to testify.

In the event that a Grievance Committee of a local bar association or Disciplinary Counsel shall in the case of a disciplinary investigation as provided for in this rule seek determination of a procedural question, the principal officer of a local bar association or the Chairman of its Grievance Committee or Disciplinary Counsel shall direct a written inquiry to the Chairman of the Board of Commissioners by filing it with the Secretary of the Board. Upon receipt of such written request, the Chairman of the Board of Commissioners may refer the inquiry to a panel of three members of the Board. The three-member panel shall be selected by the Secretary of the Board of Commissioners. The written request shall be documented with such facts, citations, statutory references and other written data that may be of assistance to make a determination of the matter presented. After the panel has completed its study of the problem presented, the panel shall make a written recommendation as to solution of the question. Upon receipt of such report and recommendation, the Chairman of the Board of Commissioners shall promptly convene the members of the Board who shall approve, reject, modify or otherwise dispose of the panel's recommendation. In the event that the question presented requires immediation attention for decision, the Chairman of the Board has the discretionary power to waive reference of the question to a panel, but shall submit the question or

questions presented to the entire Board for its decision.

Bar associations certified by the Supreme Court in accordance with Section (5)(c) of these rules may be reimbursed from the funds created by the registration fees collected, pursuant to Rule VI, for direct expenses incurred by such bar association in performing the obligations imposed on it by these rules, which shall be limited to costs for depositions, transcripts, copies of documents and for necessary travel expenses incurred outside the county of the local bar association. There shall be no reimbursement for the cost of any full-time or part-time investigators or time of other bar association personnel or attorneys in discharging these obligations. Reimbursement shall be made upon submission to the Disciplinary Counsel of receipted copies of invoices for the aforesaid purposes and upon the approval of the Secretary of the Board of Commissioners on Grievances and Discipline of the Bar.

(5) Definitions.

(a) Misconduct. Misconduct shall mean any violation by an attorney of any provision of the oath of office taken upon admission to the practice of law in this State or any violation of the Code of Professional Responsibility as adopted by the Court from time to time, disobedience of these rules or of the terms of an order imposing a suspension from the practice of law, or the commission or convinction of a crime involving moral turpitude.

(b) Mental Illness. Mental illness shall mean the condition defined in R.C. 5122.01(A).

(c) Grievance Committee. Grievance Committee shall mean that committee designated by a local bar association, which association is certified by the Supreme Court of Ohio to be responsible for the investigation of allegations of misconduct by attorneys and mental illness affecting attorneys and the initiation of complaints as a result thereof under the provisions of these rules.

(6) Manner of Discipline. Each attorney and counselor at

law found guilty of misconduct shall be disciplined. The discipline of such persons shall be

(a) a permanent disbarment from the practice of law, or

(b) suspension for an indefinite period from the practice of law subject only to reinstatement as hereinafter provided, or

(c) suspension for a period of one year from the practice of law, or

(d) a public reprimand.

(7) Effect of Discipline. A person disbarred or a person who has voluntarily surrendered his license to practice shall never thereafter be readmitted to the practice of law in this State. A person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. A person who has been suspended for a period of one year from the practice of law or who has been publicly repremanded for misconduct, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct.

(8) Automatic Indefinite Suspension from the Practice of Law for Conviction of an Offense Involving Moral Turpitude.

(a) Any attorney admitted to the practice of law in the State of Ohio who is convicted in this State of an offense, other than a petty offense as defined by the Ohio Rules of Criminal Procedure, or who is convicted of an equivalent offense under the laws of any other jurisdiction, shall be subject to an automatic indefinite suspension.

(i) A certified copy of the judgment entry of conviction of an attorney of an offense defined in this rule shall be transmitted forthwith by the judge entering such judgment to the Secretary of the Board of Commissioners on Grievances and Discipline of the Bar. A certified copy thereof

shall also be transmitted forthwith to Disciplinary Counsel or the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in this State, wherein the attorney practices law or resides.

(ii) Upon receipt from any source of a certified copy of the judgment entry of conviction by the Secretary of the Board of Commissioners on Grievances and Discipline of the Bar, the Secretary shall promptly cause such entry to be submitted to the Supreme Court whether the conviction resulted from a plea of guilty or a plea of nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal.

(iii) The Court may enter such order as it deems appropriate, including an order immediately and indefinitely suspending the attorney from the practice of law.

(b) A certified copy of a judgment entry of conviction of an offense shall be conclusive evidence of the commission of that offense in any disciplinary proceedings instituted against an attorney based upon the conviction.

(c) Any disciplinary proceeding instituted against an attorney based upon a conviction of an offense shall not be brought to hearing until all appeals from the conviction are concluded.

(d) An attorney suspended under the provisions of this rule or Rule II of the Supreme Court Rules for the Government of the Judiciary shall be reinstated by the Court upon the filing with the Secretary of the Board of Commissioners of a certified copy of a judgment reversing the conviction of the crime. Such reinstatement shall not terminate any disciplinary investigation or proceeding then pending against the attorney.

(e) Duty of Clerk on Entering Order. Upon the entry of an order indefinitely suspending an attorney for conviction of an offense, the Clerk of the Court shall mail certified copies thereof as provided in Section (20) of these rules.

(9) The Complaint; Where Filed; By Whom Signed. A

complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Complaints filed by a Grievance Committee of any regularly organized local bar association in the State shall not be accepted for filing unless signed by one or more members of the Bar of Ohio in good standing (who shall be counsel for the Relator) and supported by a certificate in writing signed by the President, Secretary, or Chairman of the Grievance Committee of any regularly organized local bar association in the State (which association shall be deemed the Relator), certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. Such certification shall constitute a representation that, after investigation, the Relator believes reasonable cause exists to warrant a hearing on such complaint, and shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

Complaints filed by Disciplinary Counsel shall be filed in the name of Disciplinary Counsel as Relator.

Upon the filing of a complaint with the Secretary of the Board, Relator shall forward a copy thereof to Disciplinary Counsel and the local bar association of the county in which the Respondent resides and maintains his office and the county from which the complaint arose.

(10) Duty of the Board Upon Filing of the Complaint.

(a) Notice to Respondent. The Secretary of the Board of Commissioners shall send a copy of the complaint by certified mail to the Respondent with a notice requiring him to file, within twenty (20) days after the mailing of such notice, six (6) copies of his answer and to serve copies thereof upon

counsel of record named in the complaint. Extensions of time for the filing of the answer may be granted, for good cause shown, by the Secretary of the Board of Commissioners.

(b) Mental Illness Suspension. After an answer has been filed or the time for answer has elapsed, if the complaint or answer alleges mental illness supported by a certified copy of a journal entry of a court of competent jurisdiction adjudicating mental illness, or if the Board finds existing mental illness after an examination provided in (c) hereof, the Board shall forthwith certify the complaint to this Court and the Court may suspend the Respondent from the practice of law.

(c) Examination. If the complaint or answer alleges existing mental illness unsupported by a journal entry of a court of competent jurisdiction or mental illness is otherwise placed in issue, the Board or panel may, on its own motion or on motion by either party, order a medical or psychiatric examination of Respondent by one or more physicians, designated by the Board or panel, whose findings shall be presented to the Board or panel as evidence and made available to both parties.

(d) Duty of Clerk on Entering Order. Upon the entry of an order suspending an attorney for mental illness, the Clerk of the Court shall mail certified copies thereof as provided in paragraph one of Section (20) and shall change the registration of respondent to inactive status. No publication of such order shall be made but the order shall be a matter of public record.

(e) Termination. Any suspension under this section may be terminated on Respondent's application to the Board and a showing of removal of the cause for the suspension, which is certified by the Board to, and affirmed by, the Court.

(11) Hearing by Panel of Three Commissioners. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a

formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Secretary of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes. Requests for continuances may be granted by the Chairman of the panel for good cause shown.

The Chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

(12) Authority of Panel; Dismissal. If the panel finds that the complaint or evidence is insufficient to support a charge of misconduct the panel may order that the complaint be dismissed. Such action shall be reported to the Secretary of the Board of Commissioners who shall give written notice of the action taken to the Board of Commissioners, the Respondent, all counsel of record, Disciplinary Counsel, and the local bar association or associations of the county in which the Respondent resides and maintains his office and the county from which the complaint arose.

(13) Referral by Panel. In the alternative, if the panel determines that findings of fact and recommendations for dismissal should be referred to the Board of Commissioners for review and action by the full Board, the panel may submit its findings of fact to the Board of Commissioners and may recommend dismissal in the same manner as provided in the following sections of this Rule V with respect to public reprimand, suspension or disbarment.

(14) Public Reprimand; Suspension or Permanent Disbarment; Duty of Panel. If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for a period of one year, suspension for an indefinite period, or permanent disbarment is merited,

the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

(15) Review by Entire Board of Commissioners. Upon review, said Board of Commissioners may refer the matter back to the panel for futher hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the complaint is dismissed, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

(16) Public Reprimand; Suspension or Permanent Disbarment; Duty of Board after Review. If the Board of Commissioners determines that a public reprimand, suspension for a period of one year, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

(17) Show Cause Order Issued by the Court to Respon-

dent. On the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of this Court on the Respondent and all counsel of record, personally or by certified mail.

(18) Response to Order to Show Cause and Objections. The Respondent or Relator within twenty (20) days after the issuance of an order to show cause may file objections to the findings or recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued, and a brief in support of such objections, together with proof of service of copies thereof on the Secretary of the Board of Commissioners and on all counsel of record. All objections and briefs shall be filed in the number and form required by rules of this Court for original actions.

(19) Answer briefs. Answer briefs together with proof of service shall be filed within fifteen (15) days after briefs in support of objections have been filed. All briefs shall be filed in the number and form required by rules of this Court for original actions.

(20) Review by Court; Reimbursement for Expenses of Board; Duty of Clerk on Entering Order; Duties of Disqualified or Resigned Attorney.

(a) After hearing on objections, or, if objections are not filed within the prescribed time, this Court shall enter such order as it may find proper, which may include provision for reimbursement of costs and expenses incurred by the Board of Commissioners. Upon the entry of any disciplinary order pursuant to this rule, or acceptance of resignation from the practice of law, the Clerk of this Court shall mail certified copies thereof to counsel of record, to the Board of Commissioners, to Respondent attorney (at his last known address), to the Disciplinary Counsel, to the local bar associa-

tion or associations in the county or counties in which such attorney resides and maintains his office and the county or counties from which the complaint originated, to the Presiding Judge of the Court of Common Pleas for such county or counties, and to the Presiding Judge of the United States District Courts in Ohio, the United States Court of Appeals for the Sixth Circuit, and to the Supreme Court of the United States.

If a disciplinary order of the Court provides for a public reprimand, the Clerk of this Court shall arrange for publication thereof in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the local bar association and by the publisher of the official reports of this Court. Such publication shall include a citation of the case in which the public reprimand was issued.

If a disciplinary order of the Court provides for a permanent disbarment or suspension for an indefinite period or for a period of one year from the practice of law, the Clerk of this Court shall arrange for publication thereof in the official reports of this Court, in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the local bar association. If any attorney resigns from the practice of law, the Clerk of this Court shall arrange for publication of the order of the Court in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the local bar association and by the publisher of the official reports of this Court.

(b) This court shall include in its order disbarring or suspending, for mental illness or disciplinary reasons, an attorney, or in any order pertaining to the resignation of an attorney, a time limit not to exceed thirty days, within which the disqualified attorney shall:

(i) Notify all clients being represented in pending matters and any co-counsel of his disbarment, suspension or resignation and his consequent disqualification to act an as attorney after the effective date of such order, and, in the

absence of co-counsel, also notify the clients to seek legal services elsewhere, calling attention to any urgency in seeking the substitution of another attorney in his place;

(ii) Regardless of any fees or expenses due the attorney, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to any urgency for obtaining such papers or other property;

(iii) Refund any part of any feeds or expenses paid in advance that are unearned or not paid, and account for any trust money or property in his possession or control;

(iv) Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties, of his disqualification or resignation to act as an attorney after the effective date of such disqualification order, and file a notice of disqualification of counsel with the court or agency before which the litigation is pending for inclusion in the respective file or files;

(v) All notices required by such an order of this Court shall be sent by certified mail and shall contain a return address where communications may thereafter be directed to the disqualified attorney;

(vi) Within the time limit prescribed by this Court the disqualified attorney shall file with the Clerk of this Court and the Disciplinary Counsel an affidavit showing compliance with the order entered pursuant to this rule and proof of service of notices required by said order. Such affidavit shall also set forth the address where the affiant may receive communications, and said offices shall be kept advised of any later change in address by the disqualified attorney;

(vii) A disqualified attorney shall retain and maintain a record of the various steps taken by him pursuant to the order entered by this Court so that, upon any subsequent proceeding instituted by or against him, proof of compliance

with the order will be available for receipt in evidence.

(c) Whenever an attorney is suspended for mental illness, cannot be found in the jurisdiction for a period of sixty days or more, dies, refuses to meet or work with a significant number of clients for a period of sixty days or more, or fails to comply with Section (b) of this rule, and no partner, executor or other responsible party capable of conducting the attorney's affairs is available and willing to assume appropriate responsibility the Disciplinary Counsel may appoint an attorney or attorneys or a local bar association to inventory the files of such attorney and to take such action, including action set forth in Section (b) herein, as is necessary to protect the interest of clients of such attorney. Upon approval by the Secretary of the Board of Commissioners on Grievances and Discipline of the Bar, Disciplinary Counsel may allow reasonable fees to be paid to such appointed attorney or attorneys from the registration fees collected pursuant to Rule VI of the Supreme Court Rules for the Government of the Bar. An attorney or bar association so appointed shall not, except as necessary to carry out the order of appointment by the Disciplinary Counsel, disclose any information contained in files so inventoried without the written consent of the client to whom such file relates. Such attorney may not represent that client.

(21) Proceedings Private; Exceptions. All proceedings and documents relating to complaints and hearings thereon and proceedings in connection therewith shall be private except

(a) where the Respondent shall request in writing that they be public, or

(b) where the Respondent by voluntary act waives privacy of the proceedings, or

(c) where proceedings filed with the Supreme Court of Ohio recommend the discipline of permanent disbarment or suspension for an indefinite period, or suspension for a period of one year, or

(d) where any disciplinary matter is heard by the

Supreme Court of Ohio, other than in conference, on objections to the findings or recommendations of the Board of Commissioners.

(A copy of the findings, recommendations and actions of the Panel and the Board of Commissioners in each case shall be given to any member of the Court upon request.)

(22) Suspension for One-Year Period; Reinstatement. At the expiration of a suspension for a period of one year, the Respondent shall be reinstated to the practice of law, upon application by the Respondent. Said application shall be in writing and filed with the Clerk of this Court. It shall indicate the date such suspension was ordered, shall include an affidavit by Respondent indicating whether any formal disciplinary proceedings are pending against said Respondent, and request reinstatement pursuant to this rule. This Court shall order said Respondent reinstated, provided that all costs of the proceedings as ordered by the Court have been paid, that the Respondent has complied with the order of suspension, and that no formal disciplinary proceedings are pending against Respondent. The Clerk of this Court shall provide notice of such reinstatement to all persons or organizations who received copies of the disciplinary order of this Court ordering Respondent's suspension.

(23) Petition for Reinstatement. No petition for reinstatement to the practice of law shall be entertained by this Court and the same may not be filed in this Court, within a period of two (2) years after the entry of an order suspending for an indefinite period the Petitioner from the practice of law in this State or within a period of two (2) years after the denial of a petition for reinstatement to the practice of law filed by such Petitioner.

(24) Contents of Petition for Reinstatement. Subject to the foregoing restrictions, any person who has been suspended for an indefinite period from the practice of law and who wishes to be reinstated may file his verified petition and twenty (20) copies thereof with the Clerk of this Court, setting forth

(a) the date when such suspension was ordered, and if there was a reported opinion, the volume and page of the official reports of this Court where such opinion appears;

(b) the dates all such prior petitions for reinstatement were filed, denied or granted;

(c) the names of all persons and organizations, except the Petitioner and the Board of Commissioners, who were, or would be, entitled, under this Rule, to receive from the Clerk of this Court certified copies of the disciplinary order of this Court against Petitioner resulting in his suspension; and the name of the local bar association or associations in the County in which he resides at the time of the filing of the Petition and of each County in which he proposes to maintain an office if reinstated; and

(d) the facts upon which he relies to establish by clear and convincing evidence that he possesses all the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against him.

(25) Costs to be Deposited with Petition for Reinstatement. Such petition shall be accompanied by a deposit in an amount to be fixed by the Clerk, for probable costs and expenses to be incurred in connection with said proceedings, which shall include any amounts unpaid under any prior order of this Court.

(26) Requisites for Reinstatement. No person shall be reinstated unless he has established by clear and convincing evidence that he possesses all of the qualifications, mental, educational and moral, which would have been a requirement of an applicant for admission to the Bar of Ohio at the time of his original admission, and that he is now a proper person to be readmitted to the Bar of Ohio, notwithstanding the previous disciplinary action taken against the Petitioner. In such

case the order of reinstatement may be conditioned upon the Petitioner's subsequently taking and passing a regular bar examination of this Court and thereafter taking the prescribed oath of office.

Paragraphs C and D of Section 6 of Rule I of the Supreme Court Rules for the Government of the Bar of Ohio shall not apply to any petitioner with respect to whom such an order of reinstatement may have been issued.

(27) Petition for Reinstatement Referred to Board of Commissioners. Unless denied forthwith for insufficiency in form or substance, the Clerk shall forward five (5) copies of the petition to the Secretary of the Board of Commissioners and such petition shall be deemed to be referred, without court order, to the Board of Commissioners to hold a hearing or hearings, and take and report evidence relevant to the rehabilitation of the Petitioner and his possession of all the qualifications, mental, educational and moral, required of an applicant for admission to the Bar of Ohio at the time of his original admission.

(28) Hearing of Petition by Panel of Three; Hearing Shall Be Public; Who May Appear; Appeal to Court From Denial of Petition by Board of Commissioners. The Secretary of the Board of Commissioners shall appoint a hearing panel of three (3) Commissioners no one of whom shall be a resident of the district in which the Petitioner resides or of the district in which he resided at the time of his suspension and said panel shall conduct a hearing or hearings upon such petition. Reasonable notice of any hearing shall be given to the Petitioner or his counsel and to all persons or organizations referred to in Section (24) (c). Such hearing shall be public. Any interested person, any member of the Bar, and Disciplinary Counsel may appear before the hearing panel in support of or in opposition to the petition.

In the event that the Grievance Committee of a local bar association referred to in Section (24) of this rule determines that matters relating to petitioner's qualifications for rein-

statement are sufficiently serious and complex as to require the assistance of Disciplinary Counsel, the chairman of such committee shall direct a written request for assistance to the Disciplinary Counsel. The Disciplinary Counsel shall investigate all such matters referred to him and report the results of his investigation to the committee which requested it.

The hearing panel shall make and certify a report of the proceedings before it, including its findings of fact and recommendations, to the Board of Commissioners; and all proceedings before such panel and the Board of Commissioners shall, whenever appropriate, be governed by the provisions hereinbefore contained governing disciplinary proceedings, including proceedings in this Court or an issuance of an order to show cause why the final report of the Board of Commissioners should not be confirmed.

The Board, in its discretion, may recommend that the Petitioner be required to take and pass one of the regular bar examinations as a condition to readmission. If the final report should recommend denial of the petition, the Petitioner shall have ten (10) days from receipt of notice of the date of filing of such report to file objections thereto and brief in support thereof.

If the final report should recommend granting of the petition any person or organization referred to in Section (24) (c) shall have ten (10) days from receipt of notice of filing of such report to file objections to the recommendations and brief in support thereof. The Court shall thereupon enter an appropriate order, which may include such provisions for reimbursement of the costs and expenses incurred in connection with the proceedings as the Court shall deem just.

(29) Manner of Service. Whenever provision is made for the service of any notice, order, report or other paper or copy thereof upon any Respondent or Petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such Respondent or Petitioner, either personally or by certified mail.

(30) Quorum of Panel or Board. A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

(31) Clerk is Agent for Service of Notices on Nonresident Attorney. Any nonresident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, or any resident of this State, having been admitted as an attorney and counselor at law by the rules of this Court, who subsequently becomes a nonresident or conceals his whereabouts, by such admission to the practice of law within this State makes the Clerk of this Court his agent for the service of any notice provided for in any proceeding instituted before the Board of Commissioners against such attorney and counselor at law, pursuant to this rule.

(32) Manner of Service on Clerk; Record of Such Service Not a Public Record. All such notices shall be served by the Secretary of the Board of Commissioners upon the Clerk of this Court by leaving at the office of said Clerk a true and attested copy of such notice and any accompanying document and by sending to the Respondent, by certified mail, postage prepaid, return receipt requested, a like, true and attested copy, with an endorsement thereon of the services, upon said Clerk of this Court, addressed to such Respondent at his last known address. The receipt indicating the certified mail number shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or Court before which there is pending any proceeding in which notice has been given as provided in this section may order such continuance as is necessary to afford the Respondent reasonable opportunity to appear and defend. The Clerk of this Court shall keep a record of the day and hour of service upon him of such notice and any accompanying document, which shall not be a public record in the office of said Clerk.

(33) Power to Issue Subpoenas. In investigations and proceedings under this rule, upon application by Disciplinary Counsel, or by the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the state authorized to sign a complaint under Section (9) hereof, or by the Respondent or Relator, each member of the Board of Commissioners and its Secretary shall have power to issue subpoenas and to cause testimony to be taken under oath before Disciplinary Counsel, or before the Grievance Committee of any regularly organized local bar association in the State, or before a hearing panel of the Board of Commissioners. All such subpoenas shall be signed by a member of the Board of Commissioners or its Secretary and served as provided by statute.

(34) May Order Depositions. The Secretary of the Board of Commissioners may order testimony of a witness to be taken by deposition within or without this state in the manner prescribed for the taking of depositions in civil actions, and such depositions may be used to the same extent as permitted in civil actions.

(35) Effect of Refusal to Testify. The refusal or neglect of the person subpoenaed as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer any proper question shall be deemed to be contempt of this Court and shall be punishable accordingly.

(36) Rules of Evidence. All rules of evidence shall be observed in the conduct of all hearings, and the Respondent may be represented by counsel, who shall enter formal appearance.

(37) Docket of Complaints. The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, which shall be retained permanently as a part of the records of his office.

(38) Board May Prescribe Rules. The Board of Commissioners may, subject to the prior approval of this Court, adopt other rules and regulations not inconsistent herewith.

(39) Rule to be Liberally Construed. The process and procedure under this rule and other regulations approved by this Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objections, report or order to show cause may be made at any time prior to final order of the Court. The party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This rule and such regulations relating to investigation and proceedings involving complaints of misconduct and petitions for reinstatement shall be liberally construed for the protection of the public, the courts and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable, and to all future investigations, complaints and petitions whether the conduct involved occurred prior or subsequent to the amendment of this rule. To the extent that application of this amended rule to such pending proceedings may not be practicable, the rules and regulations in force at the time this amended rule became effective shall continue to apply.

DR 1-102. Misconduct.

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

(Adopted effective October 5, 1970, 23 Ohio St. 2d 1.)

DR 9-102. Preserving Identity of Funds and Property of a Client

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.